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No. 94-144

# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1994

COMBINED MANAGEMENT, INC.,
*Petitioner,*
VS.
BRIAN K. ATCHINSON, In His Representative Capacity As Superintendent, Bureau of Insurance of the State of Maine,
*Respondent.*

**On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit**

## MOTION OF THE INTERNATIONAL ASSOCIATION OF ENTREPRENEURS OF AMERICA BENEFIT TRUST FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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Pursuant to Supreme Court Rule 37, the INTERNATIONAL ASSOCIATION OF ENTREPRENEURS OF AMERICA BENEFIT TRUST ("IAEA") hereby respectfully moves the Court for leave to file the brief *amicus curiae* lodged with this motion in support of Petitioner's application for writ of certiorari in this action. This motion is made on the following grounds:

1. IAEA attempted to obtain the consent of all parties to the filing of a brief *amicus curiae*. The State of Maine refused consent.

2. IAEA is a multiple employer welfare arrangement, within the meaning of ERISA § 3(40), 29 U.S.C. § 1002(40), that administers an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 ("ERISA").

3. IAEA provides employers participating in the plan a wide range of employee benefits including benefits for work-related injury and occupational disease.

4. Petitioner, Combined Management, Inc., is one of the employers participating in IAEA. Although IAEA is not a party to the case, it has a direct involvement in this specific dispute.

5. If the First Circuit's opinion is allowed to stand, the opinion will have a significant adverse effect on IAEA, will have the result of reducing the benefits provided by IAEA to Petitioner, and will effectively give the states the authority to prohibit IAEA from offering a benefit specifically authorized by ERISA.

6. IAEA offers an alternative and unique approach to the issues presented by this case. To the best of IAEA's knowledge, the approach described in its brief has not previously been presented to the Court.

7. This alternative analysis, IAEA's direct involvement in the dispute, and the likelihood of significant adverse impact on IAEA are the grounds on which IAEA bases its motion for leave to file the brief *amicus curiae*.

Dated: September 14, 1994

Respectfully submitted,

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## BRIEF *AMICUS CURIAE* OF INTERNATIONAL ASSOCIATION OF ENTREPRENEURS OF AMERICA BENEFIT TRUST IN SUPPORT OF PETITIONER

## SUMMARY OF ARGUMENT

Petitioner's application for a writ of certiorari should be granted for three reasons. First, this case involves issues of paramount federal importance. Workers' compensation benefits affect almost every employee in this country. Second, the decision of the First Circuit in this case is irreconcilable with decisions of the Second Circuit and other lower courts. One recent group of cases, the "economic impact cases," finds preemption if a state law has the effect of reducing

benefits offered by ERISA plans. Another group of cases, the "workers' compensation cases," reaches exactly the opposite conclusion, inconsistently finding *no* preemption even though a state law has the effect of reducing benefits offered by ERISA plans. Third, all of the workers' compensation cases, including this case, incorrectly interpret this Court's decision in *Shaw v. Delta Airlines,* 463 U.S. 85 (1983). These cases interpret *Shaw* in a manner that is inconsistent with other decisions of this Court and inconsistent with the plain language of ERISA itself.

It is extremely important that this Court resolve the issues presented by this case. *Amicus* believes that this case offers the best opportunity for complete resolution. This case will give the Court the opportunity to clarify and resolve issues left undecided by *Shaw,* will give the Court an appropriate vehicle for deciding the extent to which an economic impact on an ERISA plan will result in preemption, and will provide needed guidance in an area of immediate concern. In support of its position that this case should be heard by the Court and that the First Circuit opinion is incorrect, *Amicus* sets forth below its view of the conflicting lines of authority and offers an alternative reading of *Shaw* that may provide the basis for reconciling the conflict.

## INTEREST OF AMICUS CURIAE

*Amicus curiae* INTERNATIONAL ASSOCIATION OF ENTREPRENEURS OF AMERICA BENEFIT TRUST is the funding vehicle for the plan provided by Petitioner Combined Management, Inc. to its employees, which is at issue in this case. The plan is designed as a multiple employer welfare arrangement that is multi-state in scope. The plan provides both health and workers' compensation benefits for employees through *Amicus.* The First Circuit's decision in this case, and other decisions on the same issues, will not only affect the ability of *Amicus* to

provide workers' compensation benefits, it will also threaten *Amicus'* very existence. For that reason, *Amicus* is vitally interested in having the petition in this case granted and the First Circuit decision reversed.

## ARGUMENT

### I. The Proper Relationship Between ERISA and State Workers' Compensation Laws Raises Important Federal Questions.

Workers' compensation is an invaluable benefit, affecting almost every employee in the country. The traditional system for providing that benefit has become almost prohibitively expensive for many employers, who have begun exploring alternative methods for providing it. One popular alternative has been to combine workers' compensation with other welfare benefits in an ERISA plan. This alternative is prompted in large part by a desire to avoid the high procedural costs and rampant fraud associated with traditional workers' compensation programs. Significant cost savings can be obtained by combining workers' compensation with other health benefits.

This combination of ERISA plans and the workers' compensation benefits necessarily raises issues of paramount federal importance. In the context of the current national health care debate, those issues are particularly timely.

Specific legal issues involved include the extent to which state workers' compensation laws have a significant economic impact on ERISA plans and the extent to which states can apply workers' compensation laws to employers who offer those benefits in an ERISA plan. Litigation resulting from state attempts to enforce workers' compensation laws against employers offering those benefits in ERISA plans (the "workers' compensation cases") have produced decisions that are totally inconsistent with other

significant ERISA preemption cases (the "economic impact cases").

The economic impact cases find that state laws "relate to" ERISA plans because they have an economic impact on those plans; therefore, pursuant to ERISA § 514(a), 29 U.S.C. § 1144(a), the state laws are superseded. The economic impact can arise in two ways — it can increase plan costs or it can cause reduction of plan benefits. Either economic impact will result in preemption. State laws cause reduction of ERISA plan benefits when those laws require an employer to provide workers' compensation benefits in a separate plan even though the employer already provides those same benefits in an ERISA plan. If the analysis of the economic impact cases were applied to state workers' compensation laws, the laws would be preempted. The economic impact cases would permit offering workers' compensation benefits in an ERISA plan; workers' compensation cases do not. *Amicus* believes that the two lines of cases cannot presently be reconciled and that one or the other must be reversed.

## II. The Economic Impact Cases Hold That ERISA Preempts State Laws Having a Significant Economic Impact on ERISA Plans.

The leading economic impact case is the Second Circuit decision in *Travelers Insurance Co. v. Cuomo*, 14 F.3d 708 (2nd Cir. 1993), *petition for cert. filed*, 62 U.S.L.W. 3625 (Mar. 9, 1994) (No. 93-1408). There are contrary cases, but they rely on a case overruled by *Travelers*.[1] Finding that

[1] *Travelers* expressly overruled the same court's prior decision in *Rebaldo v. Cuomo*, 749 F.2d 133 (2d Cir. 1984), *cert. denied*, 472 U.S. 1008 (1985), which had been the leading case on the issue of economic impact. Most of the contrary economic impact cases (and indeed, many of the workers' compensation cases) rely on *Rebaldo*. The primary case against *Travelers* is the Third Circuit's opinion in *United Wire, Metal &*

New York medical care surcharges had a "significant economic burden on ERISA plans," the court held they were preempted because they "forced ERISA plans to either increase plan costs or reduce plan benefits." 14 F.3d at 720. *Travelers* was based in substantial part on *E-Systems v. Pogue*, 929 F.2d 1100 (5th Cir. 1991), holding that the Texas Administrative Services Act was preempted by ERISA. As stated by the court in *E-Systems*, "the cost of the Plan must therefore increase for the employer and/or employees or the benefits must be adjusted downwards to offset the tax bite. This is the type of impact Congress intended to avoid when it enacted [ERISA]." 929 F.2d at 1103.

Another good example is the recent opinion in *New England Health Care Employee Union District 1199, SEIU AFL-CIO v. Mount Sinai Hospital*, 846 F. Supp. 190 (D. Conn. 1994), concerning Connecticut's Uncompensated Care Pool Act, which imposed an assessment on all payers other than certain federal programs. Relying on *Travelers*, the court held that the statute was preempted as it applied to ERISA Plans. One of the most important reasons given was that ERISA plans pay 70% of all medical expenses; and, therefore, the law relied on ERISA plans for payment. "Without ERISA plans," the court concluded "the [a]ct would not be economically viable." 846 F. Supp. at 195. As

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*Machine Health & Welfare Fund v. Morristown Memorial Hospital*, 995 F.2d 1179 (3d Cir. 1992), *cert. denied*, 114 S.Ct. 382 (1993). *United Wire* relied heavily on *Rebaldo* to conclude that substantial economic impact alone is not sufficient to trigger preemption. Because *Travelers* overruled *Rebaldo*, the primary basis for the *United Wire* opinion is no longer good law. Other decisions following *United Wire* are similarly suspect. *See Kearney v. U.S. Healthcare, Inc.*, No. CIV. A94-2625, 1994 WL 409729 (E.D. Pa. August 3, 1994); *Thiokol v. Roberts*, No. 4:90-CV-12, 1994 WL 396155 (W.D. Mich. July 22, 1994); *Boyle v. Anderson*, 849 F. Supp. 1307 (D. Minn. 1994).

a result of the state law, "plans in Connecticut must either increase costs or reduce benefits." *Id.* at 196.

### III. The Workers' Compensation Cases Are Totally Inconsistent.

The workers' compensation cases involve state attempts to require employers to establish separate workers' compensation plans for employees even though the employers had already provided workers' compensation benefits in ERISA plans. This case arose in that manner.

These cases interpret *Shaw* as authorizing state laws requiring all employers to provide workers' compensation benefits in a separate workers' compensation plan. Those laws effectively prohibit employers from offering workers' compensation benefits in an ERISA plan. Both the First Circuit, in this case, and the Ninth Circuit in *Employee Staffing Services, Inc. v. Aubry*, 20 F.3d 1038 (9th Cir. 1994), reach that result. Both courts recognized that their rulings may result in some duplication of benefits, but that duplication of benefits did not affect their analysis. *See also Employers Resource Management Company, Inc. v. James*, 853 F. Supp 920 (E.D. Va. 1994); *Barker v. Pick N' Pull Auto Dismantlers, Inc.*, 819 F. Supp. 889 (E.D. Cal. 1993).

According to the First Circuit in this case:

> " . . . Maine's law, while having an economic impact on CMI, does not have economic impact on IAEA Plan itself. Clearly, any law that increases a company's cost of doing business can be said to affect that business's ability to provide benefits under its welfare benefit plan. This is not the same, however, as imposing burdens on the welfare benefit plan itself. The increased cost of administrative burdens imposed by the state law must have some connection to the covered ERISA plan before the preemption analysis can come into play . . . .

> "... Maine's law may increase CMI's cost of doing business, but it does not affect IAEA Plan's cost of providing benefits or costs of administration. Should CMI choose voluntarily to change its coverage under IAEA Plan in response to Maine's law, we consider such a decision to constitute, at most, an effect of the law that is too "tenuous" and "remote" to warrant preemption."

*Combined Management, Inc. v. Superintendent of the Bureau of Insurance,* 22 F.3d 1, 7 (1st Cir. 1994).

The First Circuit in this case also distinguished *Travelers* and *E-Systems* on the ground that those cases involved laws increasing the costs of plan operation. The court elevates form over substance. Although the law does not refer directly to an ERISA plan, the effect of the law is to cause employers to delete the workers' compensation coverage from ERISA plans. According to the majority of the economic impact cases, that is exactly the type of adverse impact on an ERISA plan that the ERISA preemption provision is designed to prevent.

The two lines of cases are irreconcilable. If *Travelers* is correct, the First Circuit's opinion in this case is wrong. The problem arises because the workers' compensation cases have misread *Shaw.*

## IV. An Alternative Interpretation of *Shaw v. Delta Airlines* Can Resolve the Conflict.

### A. The First Circuit Interpretation.

In *Shaw, supra,* the Court was asked to determine whether the New York Disability Law was preempted as it applied to employers offering disability benefits, along with other benefits, in an ERISA plan. Although the workers' compensation cases have interpreted *Shaw* to permit states to require separate plans in all cases, that interpretation is

doubtful. The Court, in *Shaw,* could not have addressed that issue because the New York statute at issue did not require separate plans in all cases. Furthermore, it is not likely that the Court would have reached that conclusion without reconciling it with ERISA § 3(1), 29 U.S.C. § 1002(1), which specifically authorizes the inclusion of workers' compensation benefits in an ERISA plan, and *Alessi v. Raybestos-Manhattan, Inc.,* 451 U.S. 504 (1981), which holds that states cannot prohibit that which is expressly allowed by ERISA. Furthermore, in *Shaw,* the state law did not prohibit something that ERISA permits, it merely compelled the employer to provide a benefit not already being provided.

The uncertainty arising out of *Shaw* is understandable. The case involved an area of traditional state concern, specifically preserved in ERISA § 4(b)(3), 29 U.S.C. § 1003(b)(3). This Court in *Shaw* was obviously concerned about the possibility that employers could avoid state requirements altogether simply by offering minimal welfare benefits and claiming the protection of ERISA's broad preemption provisions. To prevent that type of abuse, the Court was willing to stretch the language of the statute. No such abuse is present in this case. IAEA provides all of the benefits required by the state of Maine as stated in the pleadings, which must be accepted as true because this case is being decided on the pleadings. This case can be resolved on the basis of the plain meaning of the words of the statute.

**B. An Alternative Interpretation.**

That plain meaning of the statute forms the basis of the alternative reading of *Shaw* offered by *Amicus* to help resolve the conflict with other preemption cases. ERISA § 3(1), 29 U.S.C. § 1002(1), clearly gives employers the right to choose whether to offer the required benefits in an ERISA plan or in a separate plan. If an employer chooses to provide its workers' compensation benefits in a separate

plan, that plan is exempt from ERISA under ERISA § 4(b)(3), 29 U.S.C. § 1003(b)(3), because the plan is maintained solely for the purpose of complying with applicable workmen's compensation laws, and the plan is fully subject to state regulation. If an employer chooses to provide its workers' compensation benefits in an ERISA plan, state law is generally preempted, but the employer must still provide the benefits mandated by the state. If the state, after review, finds that the ERISA plan does not provide the required benefits, the state may then require the employer to establish a separately administered plan. In that situation, however, the state is not requiring employers to duplicate benefits, it is only requiring employers to offer benefits not already being provided.

The state law at issue in *Shaw* did not have the same adverse impact on the ERISA plans as do the state laws in the workers' compensation cases. The New York law did not require the duplication of benefits already offered in an ERISA plan and it did not cause ERISA plans to reduce benefits. The state was merely trying to compel the employer to offer additional benefits in a separate plan. According to *Shaw*, that was permissible because the separate plan for the additional benefits would be a plan designed solely to comply with state disability laws and would not be covered by ERISA, by virtue of ERISA § 4(b)(3), 29 U.S.C. § 1003(b)(3).

This interpretation of *Shaw* is consistent with *Travelers, Alessi* and ERISA. It applies the plain language of the statute in a consistent fashion. Because ERISA specifically allows employers to offer workers' compensation benefits in an ERISA plan, it is clear that Congress gave employers the right to choose. If states now wish to recover that authority, their arguments should be addressed to Congress. *Shaw* did not address that issue. The conclusion of the First Circuit in this case to the contrary is mistaken.

## CONCLUSION

The workers' compensation cases, of which this is one, misapply *Shaw* and are inconsistent with *Travelers*. This case gives the Court the opportunity to cure both of those important problems. *Amicus* urges the Court to grant certiorari to petitioner.

Dated: September 14, 1994

Respectfully submitted,

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